

## Calendar No. 332

110TH CONGRESS  
1ST SESSION**S. 2011**

Entitled the “Protect America Act of 2007”.

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IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2007

Mr. LEVIN (for himself and Mr. ROCKEFELLER) introduced the following bill;  
which was read twice, considered, read the third time, and failed of passage

AUGUST 3, 2007

Ordered to be placed on the calendar

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**A BILL**

Entitled the “Protect America Act of 2007”.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PURPOSE.**

4 To provide for a procedure before the FISA Court  
5 for an order, which may be amended as necessary at the  
6 request of the Government with the approval of the Court,  
7 authorizing procedures, guidelines, means or methods that  
8 will permit the collection of intelligence between foreign  
9 persons located outside the United States, while bringing

1 incidental contacts with United States persons at home  
 2 or abroad into compliance with existing law and minimiza-  
 3 tion procedures.

4 **SEC. 2. ADDITIONAL PROCEDURE FOR AUTHORIZING CER-**  
 5 **TAIN ELECTRONIC SURVEILLANCE.**

6 (a) IN GENERAL.—The Foreign Intelligence Surveil-  
 7 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended  
 8 by inserting after section 105 the following:

9 “CLARIFICATION OF SURVEILLANCE OF PERSONS  
 10 OUTSIDE THE UNITED STATES

11 “SEC. 105A. Notwithstanding any other provision of  
 12 this Act, a court order is not required for the electronic  
 13 surveillance of the contents of any communication between  
 14 persons that are not located within the United States for  
 15 the purpose of collecting foreign intelligence information,  
 16 without respect to whether the communication passes  
 17 through the United States or the surveillance device is lo-  
 18 cated within the United States.

19 “ADDITIONAL PROCEDURE FOR COURT APPROVAL FOR  
 20 AUTHORIZING CERTAIN ELECTRONIC SURVEILLANCE

21 “SEC. 105B. (a) IN GENERAL.—Notwithstanding  
 22 any other provision of this title, the Attorney General, in  
 23 consultation with Director of National Intelligence, upon  
 24 the authorization of the President, may apply to a judge  
 25 of the court established under section 103(a) for an ex  
 26 parte order, or an extension of an order, authorizing elec-

1 tronic surveillance for a period of 1 year, in accordance  
2 with this section.

3 “(b) APPLICATION.—

4 “(1) CONTENTS.—An application for an order,  
5 or extension of an order, submitted under subsection  
6 (a) shall include—

7 “(A) the identity of the Federal officer  
8 making the application;

9 “(B) a written certification made under  
10 oath by the Director of National Intelligence  
11 and the Attorney General that—

12 “(i) there are reasonable procedures  
13 in place for determining that the electronic  
14 surveillance under this section is directed  
15 at persons reasonably believed to be lo-  
16 cated outside the United States;

17 “(ii) there are reasonable procedures  
18 in place to assess the implementation of  
19 the procedures described in subclause (i) to  
20 achieve the objective described in that sub-  
21 clause;

22 “(iii) the acquisition does not con-  
23 stitute electronic surveillance within the  
24 meaning of paragraph (1) or (3) of section  
25 101(f), and, to the extent any acquisition

1 constitutes electronic surveillance within  
2 the meaning of paragraph (2) or (4) of  
3 section 101(f), that it is approved or mini-  
4 mized as appropriate;

5 “(iv) a significant purpose of the elec-  
6 tronic surveillance is to obtain foreign in-  
7 telligence information;

8 “(v) the proposed minimization proce-  
9 dures meet the definition of minimization  
10 procedures under section 101(h); and

11 “(vi) the electronic surveillance in-  
12 volves obtaining foreign intelligence infor-  
13 mation from or with the assistance of a  
14 communications service provider, custo-  
15 dian, or other person (including any offi-  
16 cer, employee, agent or other specified per-  
17 son of such service provider, custodian, or  
18 other person) who has access to commu-  
19 nications, either as they are transmitted or  
20 while they are stored, or equipment that is  
21 being or may be used to transmit or store  
22 such communications;

23 “(C) a general description of the nature of  
24 the foreign intelligence information sought; and

1 “(D) a general statement of the means by  
 2 which the electronic surveillance will be ef-  
 3 fected.

4 “(2) SPECIFIC PERSONS AND PLACES NOT RE-  
 5 QUIRED.—

6 “(A) An application for an order, or exten-  
 7 sion of an order, submitted under subsection  
 8 (a) shall not be required to identify—

9 “(i) the persons, other than a foreign  
 10 power, against whom the electronic surveil-  
 11 lance will be directed; or

12 “(ii) the specific facilities, places,  
 13 premises, or property at which the elec-  
 14 tronic surveillance will be directed or con-  
 15 ducted.

16 “(c) APPLICATION APPROVAL; ORDER.—

17 “(1) APPLICATION APPROVAL.—Notwith-  
 18 standing any other law, a judge considering an ap-  
 19 plication for an order, or extension of an order, sub-  
 20 mitted under subsection (a) shall—

21 “(A) assess—

22 “(i) the procedures by which the Gov-  
 23 ernment determines that electronic surveil-  
 24 lance under this section is directed at per-

1           sons reasonably believed to be located out-  
2           side the United States; and

3           “(ii) the minimization procedures to  
4           be used with respect to United States per-  
5           sons from such electronic surveillance ac-  
6           tivity; and

7           “(B) approve such application if the judge  
8           determines that the procedures assessed are in  
9           accordance with law and are reasonably de-  
10          signed to determine whether the targets are  
11          outside the United States.

12          “(2) ORDER.—A judge approving an applica-  
13          tion pursuant to paragraph (1) shall issue an order  
14          that—

15               “(A)(i) authorizes the electronic surveil-  
16               lance as requested; and

17               “(ii) approves the minimization procedures  
18               with respect to United States persons;

19               “(B) directs the applicant to follow the  
20               procedures referred to in section  
21               105B(b)(1)(B)(i) and the minimization proce-  
22               dures submitted by the Government as ap-  
23               proved;

24               “(C) at the request of the applicant, re-  
25               quires a specified communications service pro-

1           vider, custodian, or other specified person, to  
2           furnish the applicant forthwith with all infor-  
3           mation, facilities, or technical assistance nec-  
4           essary to accomplish the electronic surveillance  
5           in a manner that will protect the secrecy of the  
6           electronic surveillance and produce a minimum  
7           of interference with the services that provider,  
8           custodian, or other person is providing; and

9           “(D) at the request of the applicant, re-  
10          quires such communications provider, custo-  
11          dian, or other specified person to maintain  
12          under security procedures approved by the At-  
13          torney General and the Director of National In-  
14          telligence any records concerning the electronic  
15          surveillance or the aid furnished that such per-  
16          son wishes to maintain.

17          “(3) MINIMIZATION PROCEDURES.—An applica-  
18          tion for reauthorization of an order issued under  
19          this section, shall contain a description of the Gov-  
20          ernment’s minimization procedures.

21          “(d) GUIDELINES FOR SURVEILLANCE OF UNITED  
22          STATES PERSONS.—Not later than 15 days after the date  
23          of the enactment of this section, the Attorney General  
24          shall establish guidelines that address communications  
25          with persons inside the United States and United States

1 persons outside the United States and are designed to en-  
2 sure that an application is filed under section 104 when  
3 the Attorney General seeks to continue electronic surveil-  
4 lance that began under this section but—

5 “(1) effectively is or has become surveillance of  
6 a person within the United States; or

7 “(2) is of a nature or quantity as to infringe on  
8 the reasonable expectation of privacy of persons  
9 within the United States.

10 “(e) COMPENSATION.—The Government shall com-  
11 pensate, at the prevailing rate, a person for providing in-  
12 formation, facilities, or assistance pursuant to an order  
13 of the court under this section or pursuant to a directive  
14 under section 105C.

15 “(f) LIABILITY.—Notwithstanding any other law, no  
16 cause of action shall lie in any court against any person  
17 for providing any information, facilities, or assistance in  
18 accordance with an order under this section or a directive  
19 under section 105C.

20 “(g) RETENTION OF ORDERS.—An order granted  
21 under this section and directives under section 105C shall  
22 be retained for a period of not less than 10 years from  
23 the date on which such order or directive is made.

24 “(h) APPEAL.—The Government may appeal any de-  
25 nial of an application submitted under this section to the



1 court established under section 103(b). If such court de-  
2 termines that the denial was properly entered, the court  
3 shall immediately provide for the record a written state-  
4 ment of each reason for its decision, and, on petition of  
5 the United States for a writ of certiorari, the record shall  
6 be transmitted under seal to the Supreme Court of the  
7 United States, which shall have jurisdiction to review such  
8 decision.

9 “IMMEDIATE AUTHORIZATION OF CERTAIN ELECTRONIC  
10 SURVEILLANCE

11 “SEC. 105C. (a) IN GENERAL.—Notwithstanding  
12 any law, the Director of National Intelligence and the At-  
13 torney General, may, prior to the submission of an appli-  
14 cation under section 105B, authorize the immediate elec-  
15 tronic surveillance of persons reasonably believed to be  
16 outside the United States if the Director of National Intel-  
17 ligence and the Attorney General determine that it is in  
18 the interest of the national security of the United States  
19 to begin the electronic surveillance and such electronic sur-  
20 veillance is subject to the certification to be filed as set  
21 forth below. The authority in this subsection shall not be  
22 used for successive or multiple authorizations of electronic  
23 surveillance of the same or similar scope.

24 “(b) In such case, the Attorney General shall—

25 “(1) transmit within 5 days of the initiation of  
26 electronic surveillance pursuant to this section under

1 seal to the court established under section 103(a) a  
2 copy of a certification made under section  
3 105B(b)(1)(B). Such certification shall be main-  
4 tained under security measures established by the  
5 Chief Justice of the United States and the Attorney  
6 General, in consultation with the Director of Na-  
7 tional Intelligence, and shall remain sealed except  
8 upon motion of the Government;

9 “(2) submit an application for the approval of  
10 such electronic surveillance to the court established  
11 under section 103(a) as soon as practicable, but in  
12 no event more than 10 days after the initiation of  
13 the electronic surveillance; and

14 “(3) the court shall act on such application in  
15 accordance with section 105B within 30 days after  
16 receiving an application under this subsection. The  
17 court may grant one or more extensions of not more  
18 than 30 days, if the court determines that additional  
19 time is needed. Any electronic surveillance subse-  
20 quent to the court’s action shall be conducted only  
21 if approved in accordance with section 105B. If the  
22 application is disapproved, the data collected may be  
23 used or disclosed only as authorized by the court.

1       “(c) SPECIFIC PERSONS AND PLACES NOT RE-  
2 QUIRED.—A certification under subsection (a) is not re-  
3 quired to identify—

4               “(1) the person or foreign power against whom  
5 the electronic surveillance will be directed; or

6               “(2) the specific facilities, places, premises, or  
7 property at which the electronic surveillance will be  
8 directed or conducted.

9       “(d) DIRECTIVE.—With respect to an authorization  
10 of electronic surveillance under this section, the Attorney  
11 General, in consultation with the Director of National In-  
12 telligence, may direct a specified communications service  
13 provider, custodian, or other specified person, to—

14               “(1) furnish the applicant forthwith with all in-  
15 formation, facilities, or technical assistance nec-  
16 essary to accomplish the electronic surveillance in a  
17 manner that will protect the secrecy of the electronic  
18 surveillance and produce a minimum of interference  
19 with the services that provider, custodian, or other  
20 person is providing; and

21               “(2) maintain under security procedures ap-  
22 proved by the Attorney General and the Director of  
23 National Intelligence any records concerning the  
24 electronic surveillance or the aid furnished that such  
25 person wishes to maintain.

1       “(e) FAILURE TO COMPLY.—In the case of a failure  
2 to comply with a directive issued pursuant to subsection  
3 (e), the Attorney General, in consultation with the Direc-  
4 tor of National Intelligence, may invoke the aid of the  
5 court established under section 103(a) to compel compli-  
6 ance with the directive, and the court shall issue an order  
7 requiring the person to comply with the directive unless  
8 the court finds that the directive does not meet the re-  
9 quirements of this section or is otherwise unlawful. Failure  
10 to obey an order of the court may be punished by the court  
11 as contempt of court. Any process under this section may  
12 be served in any judicial district in which the person may  
13 be found.

14       “(f) PENDENCY OF APPEAL.—With the approval of  
15 a court of competent jurisdiction, the Government may  
16 continue any electronic surveillance affected by a directive  
17 issued under this section during the pendency of consider-  
18 ation of an application submitted under section 105B, and  
19 any appeal process, including the period during which a  
20 petition for writ of certiorari may be pending and the pe-  
21 riod of any review by the Supreme Court of the United  
22 States.

23                       “REPORT TO CONGRESS

24       “SEC. 105D. REPORT TO CONGRESS.—Not later  
25 than four months after the date of the enactment of this  
26 Act, the Inspector General of the Department of Justice,

1 in coordination with the Inspector General of the Office  
2 of the Director of National Intelligence and the Inspector  
3 General of the National Security Agency, shall inform, in  
4 a manner consistent with the national security, the Select  
5 Committee on Intelligence of the Senate, the Permanent  
6 Select Committee on Intelligence of the House of Rep-  
7 resentatives, the Committee on the Judiciary of the Sen-  
8 ate, and the Committee on the Judiciary of the House of  
9 Representatives, concerning electronic surveillance under  
10 this section during the previous four-month period. Among  
11 the elements of each report made under this section shall  
12 be—

13           “(1) an assessment of whether the Act is func-  
14           tioning as intended and the degree to which the pro-  
15           gram is resulting in the collection of communications  
16           that originate or terminate inside the United States;

17           “(2) a description of the incidents of non-com-  
18           pliance with a directive issued by the Attorney Gen-  
19           eral under section 105C;

20           “(3) a copy of any guidelines and procedures  
21           implementing this Act, including the guidelines es-  
22           tablished pursuant to section 105B(d);

23           “(4) a description of any incidents of non-com-  
24           pliance by an element of the Intelligence Community  
25           with guidelines or procedures established for deter-

1 mining that the electronic surveillance authorized by  
 2 the Attorney General and Director of National Intel-  
 3 ligence directed at persons reasonably believed to be  
 4 outside the United States;

5 “(5) a description of any incidents of non-com-  
 6 pliance with respect to minimization procedures and  
 7 approval requirements concerning U.S. persons; and

8 “(6) the number of certifications and directives  
 9 issued under section 105C during the reporting pe-  
 10 riod.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 12 The table of contents in the first section of the Foreign  
 13 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
 14 seq.) is amended by inserting after the item relating to  
 15 section 105 the following:

“Sec. 105A. Clarification of surveillance of persons outside the United States.

“Sec. 105B. Additional procedure for court approval authorizing certain elec-  
 tronic surveillance.

“Sec. 105C. Immediate authorization of certain electronic surveillance.

“Sec. 105D. Report to Congress.”.

16 **SEC. 3. EFFECTIVE DATE; TRANSITION PROCEDURES.**

17 (a) Except as otherwise provided, the amendments  
 18 made by this Act shall take effect immediately after the  
 19 date of the enactment of this Act.

20 (b) Notwithstanding any other provision of this Act,  
 21 any order in effect on the date of enactment of this Act  
 22 issued pursuant to the Foreign Intelligence Surveillance  
 23 Act of 1978 (50 U.S.C. 1801 et seq.) shall remain in effect

1 until the date of expiration of such order, and, at the re-  
2 quest of the applicant, the court established under section  
3 103(a) of such Act (50 U.S.C. 1803(a)) shall reauthorize  
4 such order as long as the facts and circumstances continue  
5 to justify issuance of such order under the provisions of  
6 the Foreign Intelligence Surveillance Act of 1978, as in  
7 effect on the day before the applicable effective date of  
8 this Act. The Government also may file new applications,  
9 and the court established under section 103(a) of the For-  
10 eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
11 1803(a)) shall enter orders granting such applications  
12 pursuant to such Act, as long as the application meets  
13 the requirements set forth under the provisions of such  
14 Act as in effect on the day before the effective date of  
15 this Act. At the request of the applicant, the court estab-  
16 lished under section 103(a) of the Foreign Intelligence  
17 Surveillance Act of 1978 (50 U.S.C. 1803(a)), shall extin-  
18 guish any extant authorization to conduct electronic sur-  
19 veillance or physical search entered pursuant to such Act.  
20 Any electronic surveillance or physical search conducted  
21 pursuant to an order entered under this subsection shall  
22 be subject to the provisions of the Foreign Intelligence  
23 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as in  
24 effect on the day before the effective date of this Act.

1 **SEC. 4. SUNSET.**

2 (a) Except as provided in subsections (b) and (c) the  
3 amendments made by this Act shall cease to have force  
4 or effect 180 days after the date of enactment of this Act.

5 (b) Any order under section 105B of the Foreign In-  
6 telligence Surveillance Act of 1978, as added by this Act,  
7 in effect on the date described in paragraph (1) shall con-  
8 tinue in effect until the date of the expiration of such  
9 order.

10 (c) The expiration of amendments pursuant to sub-  
11 section (a) shall not have any effect upon the liability of  
12 any party under subsection (e) of section 105B. Notwith-  
13 standing subsection (a), subsection (e) of section 105B  
14 shall remain in effect with regard to action taken in ac-  
15 cordance with sections 105A, B, C, and D.





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